

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3287 OF 2006
IN
CRIMINAL BAIL APPLICATION NO.1566 OF 2006
IN
C.C. NO.436/PW/2006
IN
C.R.NO.40/2006

Samson Osobai	Applicant
versus	
The State of Maharashtra & another	Respondents

Mr.R.N.Selhi for applicant.
Mrs.M.H.Mhatre, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th September 2006

PC :

1. The applicant is original accused in CR No.40 of 2006 which is registered with DCB, CID, Mumbai under sections 465, 467, 468, 471, 420 r/w 34 of IPC.. He is arrested on 6th May 2006 and presently in judicial custody.

2. The applicant is not an Indian Citizen. He is permanently residing in Nigeria. However, he has been charged with the above offences on the

basis that the complainant had received an E-Mail that a recruitment is going on for a company in London. The complainant responded to the E-Mail. On the pretext of obtaining a Visa for the complainant and for that purpose some amount is required to be paid, that the applicant and other two co-accused induced him to pay an amount of Rs.59,000/-. In response, the complainant was given a visa which was found by the British Consulate to be false and fabricated. He tried to contact the applicant and co-accused but no reply was received. Later on, he lodged the subject CR.. The investigations are already complete.

3. The learned Additional Sessions Judge was not inclined to grant bail to the applicant for two reasons. Firstly, that he is a citizen of Nigeria. The applicant, it is reported, that all over the words, many persons are involved in cheating innocent persons of false promises of providing employment and the learned Judge terms it as "Nigeria Fraud". The co-accused are still absconding and this is the second reason why the learned Judge feel that the applicant does not deserve to be enlarged on bail.

4. It is not disputed by the learned APP that the passport of the applicant is seized and he is in the custody of the investigating machinery. She submits that the offences are serious and the applicant would not be available to face the trial.

5. Learned advocate appearing for the applicant states that once the passport is in the custody of the Police and further the applicant not intending to leave India without prior permission of the Court and willing to abide by all such conditions which may be imposed in that behalf, his application may be considered favourably.

6. This court in a decision reported in 1988(2)-Crimes-581 has observed that nationality of the accused before the Court i.e. he being a foreigner, does not mean that he is disentitled to bail. All facts and circumstances have to be considered and on account of nationality alone the relief should not be denied.

7. In my view, the protection of Article 21 along with Article 14 of Constitution is available to persons. The word "person" and "citizen" in the Constitution have different

connotations. The fundamental rights are only available to the citizens whereas mandate of Articles 14 and 21 applies to Non-Citizens as well. On the ground that said mandate being available to even a foreigner accused of offences in India, his application can be considered and bail can be otherwise granted to him by imposing such conditions as are permissible in law.

8. Considering the fact that the applicant has undertaken not to leave India without prior permission of the Trial Court and applicant's advocate stating that such undertaking would be filed within one week from today and further on the condition that the applicant's passport shall remain in the custody of the investigating machinery till the trial is concluded, the applicant is enlarged on bail. Accordingly following order.

9. ORDER :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.40 of 2006 registered at DCB, CID, CIU, Mumbai subject to furnishing a personal bond of Rs.10,000/- (Rs.Ten thousand only) with one or two local sureties in the like

sum till conclusion of the trial;

(ii) The applicant shall furnish an undertaking stating therein that he will not leave India without prior permission of the Trial Court within one week in the Trial Court. Filing of undertaking is condition precedent for release on bail;

(iii) The applicant shall report to the DCB, CID, CIU, Mumbai once in a week till conclusion of trial;

(iv) Passport of the applicant shall not be released and to be kept deposited with the DCB, CID, CIU, Mumbai;

(v) The applicant shall not leave India without prior permission of the Trial Court;

(vi) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(vii) The applicant shall co-operate with the

Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(viii) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(ix) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)